IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9283 OF 2004

Sindhu Education Trust .. Petitioner
V/s
State of Maharashtra & Ors. .. Respondents

Mr.Piyush Shah with Mr.V.N.Tayade for the Petitioner.
Mr.C.R.Sonawane, AGP for Respondent Nos.1 & 2.

CORAM : B.H.MARLAPALLE & NARESH H.PATIL,JJ.
DATE : 25th September, 2006.

P.C.:

1. Heard Mr.Piyush Shah the learned Counsel for the petitioner and Mr.Sonawane, the learned AGP. In obedience to our order dated 18.9.2006 the Deputy Director of Education, Konkan Division is present before us and the Education Officer (Secondary), Zilla Parishad, Thane, is also present.

2. The affidavit in reply filed by the Education Officer clearly states that out of 74 teachers on the rolls of the Petitioner-trust in the schools run by it in Thane District, 53 are the teachers against sanctioned posts and remaining 21 are surplus. The affidavit furthr clarifies that in all there are 10 sindhi medium schools in Thane District, but none of these schools have any vacancy for absorption of these surplus teachers. It appears that the authorities have also made efforts to find out if these surplus teachers could be absorbed in other districts in the State and more particularly in the sindhi medium schools, and it has been stated that there is no possibility of their

absorption on account of vacancies being not available.

3. All these 21 teachers have been paid their salary without any work as at present. We have considered the scheme under Rule 26 of the M.E.P.S.Rules, 1981. Mr.Sonawane, the learned AGP invited our attention to the scheme under Rule 26(2)(iii) and expressed some apprehensions.

4. We have no doubt in our mind that before the surplus teachers are retrenched, it is necessary for the State Government to examine the possibilities of their absorption in other aided schools either in same district or anywhere in the State, depending upon the vacancies available in the respective subjects/medium. Out of these 21 teachers found to be surplus all of them may not be teaching sindhi subject, and as such it is possible that they may be able to teach other subjects like Hindi, History, Geography, Science, Mathematics and Social Science etc. It would be therefore imperative for the Deputy Director of Education to interview all these 21 teachers and find out their ability to teach the other subjects in hindi or marathi medium schools either in Thane District or in the neighbouring districts in Konkan Division or throughout the State of Maharashtra. The teachers who are found to be suitable and who would agree to go on the new posts shall be absorbed in such schools, and those who are found suitable but are not willing to move out of Thane District will have to find their way out. The same

thing applies to those teachers who cannot be absorbed in any other aided schools throughout the State of Maharashtra.

5. We therefore direct the Deputy Director of Education, Konkan Division, to call upon these 21 teachers, examine the possibility of their absorption in other schools, either in Thane District and/or in the neighbouring Districts in Konkan Division and/or throughout the State of Maharashtra, and issue the orders accordingly as early as possible. Those teachers who cannot be absorbed or who are not willing to move out of Thane District will face retrenchment and the management will be free to proceed with such action. We cannot accpet the management and in turn the State treasury to pay for the salary of the teachers who are found to be surplus and who cannot be absorbed in any other schools anywhere in the State of Maharashtra.

6. The Deputy Director of Education to complete this exercise as expeditiously as possible and in any case by 31st December, 2006 and undoubtedly the State authority will issue notices to the management as well as the teachers concerned. Needless to mention, till the completion of this exercise, bills submitted by the management will have to be cleared by the authorities.

7. Petition is disposed off in terms of the above directions.

(NARESH H.PATIL,J.) (B.H.MARLAPALLE, J.)